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8  
9 UNITED STATES DISTRICT COURT

10 SOUTHERN DISTRICT OF CALIFORNIA

11  
12 BONA FIDE CONGLOMERATE, INC.,

13 Plaintiff,

14 v.

15 SOURCEAMERICA, et al.,

16 Defendants.

Case No.: 14cv0751 GPC (AGS)

**COUNTERDEFENDANT LOPEZ'S  
OPPOSITION TO DEFENDANT AND  
COUNTERCLAIMANT  
SOURCEAMERICA'S MOTION TO  
COMPEL FURTHER RESPONSES  
TO INTERROGATORIES (SET ONE)  
AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS  
(SET ONE)**

17  
18  
19 Date: June 16, 2017

Time: 4:00 p.m.

20 Judge: Hon. Andrew G. Schopler

Courtroom: 5C (Schwartz)

21 AND RELATED COUNTERCLAIMS

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1 **I. INTRODUCTION**

2 Defendant and Counterclaimant SourceAmerica's motion to compel further  
3 responses from Counterdefendant Ruben Lopez ("Lopez") on its Interrogatories (Set  
4 One) and Requests for Production of Documents ("RFP") (Set One) should be denied.

5 This motion is concerned with four general categories of documents and  
6 information sought by SourceAmerica.

7 Category One. In the RFP Nos. 28-29, 35, 38, 124-32, 137, and 139-48 (Set  
8 One), SourceAmerica demands Lopez produce sensitive documents belonging to  
9 nonparty Tried and True Cleaning Company ("TTCC"). SourceAmerica fails to carry  
10 its burden to show that TTCC's documents are relevant and proportional to the needs  
11 of the case. Moreover, SourceAmerica has propounded a duplicative request on Bona  
12 Fide and a subpoena on TTCC for the same documents.

13 Category Two. RFP Nos. (Set One) and Interrogatory 22 (Set One), seek  
14 documents and information relating to events predating the parties' June 27, 2012  
15 Settlement Agreement, which contains a general release. As such, any responsive  
16 documents and information are irrelevant and not likely to lead to the discovery of  
17 admissible evidence.

18 Category Three. RFP Nos. 3 and 61-62 (Set One), seek all communications  
19 between Lopez and SourceAmerica (with no time or subject limitation) and all ESI  
20 related to Plaintiff and Counterdefendant Bona Fide Congolmerate, Inc.'s ("Bona  
21 Fide") participation in the AbilityOne program and communications with  
22 SourceAmerica (limited to the past five years). These requests obligate Lopez to  
23 review almost the entirety of his and his company's records and produce thousands of  
24 documents unrelated to any claims or defenses. SourceAmerica unreasonably refused  
25 to narrow these oppressive and burdensome requests during the parties' meet and  
26 confer efforts.

27 Category Four. RFP No. 91 (Set One) seeks communications between Lopez  
28 and Denise Ransom, a former SourceAmerica employee. Bona Fide produced

1 responsive documents prior to this motion and Lopez has since served a supplemental  
2 response.

3 The Court should deny the motion and sanction SourceAmerica.

## 4 **II. LEGAL STANDARD**

5 The purpose of discovery is to “remove surprise from trial preparation so the  
6 parties can obtain evidence necessary to evaluate and resolve their dispute.” Torbert v.  
7 Gore, No. 14cv2911 BEN (NLS), 2016 U.S. Dist. LEXIS 47952, at \*3-4 (S.D. Cal.  
8 Apr. 8, 2016) (citations omitted). Under Federal Rule of Civil Procedure 26(b), a party  
9 “may obtain discovery regarding any nonprivileged matter that is relevant to any  
10 party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P.  
11 26(b)(1). Proportionality factors to consider include “the importance of the issues at  
12 stake in the action, the amount in controversy, the parties’ relative access to relevant  
13 information, the parties’ resources, the importance of the discovery in resolving the  
14 issues, and whether the burden or expense of the proposed discovery outweighs its  
15 likely benefit.” Id.

16 As the party moving to compel under Rule 37(a), SourceAmerica bears the  
17 burden “of establishing that its request[s] satisf[y] the relevancy requirements of Rule  
18 26(b)(1).” Torbert, 2016 U.S. Dist. LEXIS 47952, at \*3-4. Once relevance has been  
19 shown, Bona Fide bears the burden “of showing that the discovery should be  
20 prohibited, and the burden of clarifying, explaining or supporting its objections.” BoFI  
21 Fed. Bank v. Erhart, No. 15cv2353 BAS (NLS), 2016 U.S. Dist. LEXIS 103576, at \*6  
22 (S.D. Cal. Aug. 5, 2016).

## 23 **III. ARGUMENT**

### 24 **A. Category One. SourceAmerica Fails To Show That The TTCC Related** 25 **Discovery Is Relevant Or Proportional To the Needs Of The Case.**

26 SourceAmerica’s RFP Nos. 28-29, 35, 38, 124-32, 137, and 139-48 (Set One)  
27 seek sensitive corporate, financial, and human resources documents relating to  
28 nonparty TTCC. TTCC is a for-profit affiliate of Bona Fide and Lopez is its Chief

1 Executive Officer (Lopez Decl. ¶ 2). [REDACTED]

2 [REDACTED]  
3 [REDACTED] (Dkt 419-1 at 6, 419-2 at 4, ¶¶ 14-15 and Exhibits 11-12).

4 As a preliminary matter, the Court should not compel further responses to these  
5 document requests because SourceAmerica seeks non-party TTCC's documents. Rule  
6 34 "may not be used to discover matters from a nonparty." Vieira v. Woodford, 258 F.  
7 App'x 924, 925 (9th Cir. 2007); Hatch v. Reliance Ins. Co., 758 F.2d 409, 416 (9th Cir.  
8 1985) (district court did not err in denying motion to compel defendant to produce  
9 names of similarly-situated, nonparty investors in securities class action). Instead, a  
10 Rule 45(b) subpoena duces tecum is "the usual means for discovery of documents from  
11 nonparties" like TTCC. Newton v. Nat'l Broadcasting Co., Inc., 726 F.2d 591, 592  
12 (9th Cir. 1984); Kitchens v. Tordsen, No. 1:12-cv-0105-AWI-MJS (PC), 2015 U.S.  
13 Dist. LEXIS 27225, at \*3 (E.D. Cal. Mar. 5, 2015) ("[T]he proper means of obtaining  
14 information from a non-party is through a subpoena.").

15 Indeed, SourceAmerica served TTCC with a subpoena with 47 different  
16 categories of documents requested covering the same topics as the discovery it  
17 propounded on Lopez—one week after filing the instant motion (Schouten Decl. ¶ 2,  
18 Ex. A). It is within the Rule 45 context that the Court can properly determine any  
19 restrictions on SourceAmerica's broad and invasive discovery requests. See Dart  
20 Industries Co. v. Westwood Chemical Co., 649 F.2d 646, 649 (9th Cir. 1980)  
21 (discovery should be tempered to protect a non-party from unduly burdensome  
22 discovery).

23 Assuming Lopez (and not TTCC) should respond to the requests for TTCC  
24 information, SourceAmerica fails to carry its burden to show that the TTCC related  
25 discovery is relevant or proportional. SourceAmerica contends that TTCC's  
26 documents are relevant to "assessing Bona Fide's breach of contract claim,"  
27 particularly: (1) whether SourceAmerica breached the Settlement Agreement by failing  
28 to treat Bona Fide "objectively, fairly, and equitably"; and (2) whether Bona Fide

1 lacked the qualifications or eligibility to bid on the AbilityOne Program Opportunities  
2 at issue (Dkt. 419-1, at 5:6-9, 7:6-17).

3 Rule 26(b)(1) makes “the parties and the court focus on the actual claims and  
4 defenses involved in the action.” Fed. R. Civ. P. 26 Adv. Comm. Note, 2000 amends.  
5 The Settlement Agreement is between Bona Fide and SourceAmerica; Lopez is not a  
6 contracting party (Schouten Decl. ¶ 3, Ex. B). SourceAmerica explains that the  
7 purpose of its allegedly narrowly “tailored” document requests is to “determine the  
8 exact relationship between Lopez [and Bona Fide and TTCC].” (Dkt. 419-1, at 6:27-  
9 7:1). Yet, aside from its conclusory assertions, SourceAmerica fails to show how or  
10 why the nature of the relationship between Lopez and Bona Fide and TTCC is relevant  
11 to whether SourceAmerica breached the Settlement Agreement. Coulter v. Murrell,  
12 No. 10-102 IEG (NLS), 2011 U.S. Dist. LEXIS 14922, at \*8-10 (S.D. Cal. Feb. 14,  
13 2011) (quashing subpoenas for medical records that had no bearing on due process  
14 claims in action against clerk of court).

15 SourceAmerica argues that documents responsive to RFP Nos. 129, 137, and  
16 147 are relevant to Bona Fide’s qualifications and eligibility to bid on Program  
17 Opportunities. Specifically, it notes that Bona Fide relied on TTCC’s [REDACTED]  
18 [REDACTED]  
19 [REDACTED] in its response to Sources Sought Notice 1483 (Ft. Hood, Texas) and  
20 TTCC’s [REDACTED] in its response to Sources Sought Notice 2705 (Shaw Air  
21 Force Base) (Dkt. 419-1, at 5:10-6:17).

22 However, these three discovery requests are significantly broader than necessary  
23 to confirm Bona Fide’s responses to Sources Sought Notices 1483 and 2705.  
24 Specifically, they seek:

25 “All DOCUMENTS REGARDING [TTCC’s] financial statements,  
26 including but not limited to every financial statement, on or after January  
1, 2012” (RFP No. 129);

27 “All DOCUMENTS that relate to any loans by or to BONA FIDE from  
28 [LOPEZ] and/or [TTCC], including but not limited to notes, check  
registers, cancelled checks, books of account, and any other



DOCUMENTS sufficient to identify whether any such loan was repaid in whole or part, and if any consideration was given for any such loan or any such payment on or after January 1, 2012” (RFP No. 137); and

“All DOCUMENTS that relate to any property or asset ever owned by TRIED & TRUE that was transferred to, sold to, delivered to, and/or used by YOU and/or BONA FIDE on or after January 1, 2012” (RFP No. 147).

Courts generally do not permit pre-judgment discovery like RFP Nos. 129, 137, and 147 “regarding a defendant’s financial condition or ability to satisfy a judgment” (aside from information in Rule 26(a)(1) initial disclosures) “on the grounds that such discovery is not relevant to the parties’ claims or defenses and is not reasonably calculated to lead to the discovery of admissible evidence.” SierraPine v. Refiner Prods. Mfg., 275 F.R.D. 604, 609 (E.D. Cal. 2011). These are precisely the objections interposed by Lopez.

Explaining that it does not want to “unnecessarily burden the Court,” SourceAmerica does not offer any argument as to RFP Nos. 28-29, 35, 38, 124-28, 130-32, 139-46, and 148 (Set One)<sup>1</sup> (Dkt. 419-1, at 6:27-28). SourceAmerica’s failure to explain these requests’ relevancy does not satisfy its burden of proof and the motion fails as to them. Eclipse Grp., LLP v. Target Corp., No. 15cv1411-JLS (BLM), 2017 U.S. Dist. LEXIS 77574, at \*15 (S.D. Cal. May 19, 2017) (denying motion to compel because intervenor “failed to provide specific information regarding every Request for Production at issue, and failed to . . . provide law or evidence to support his overbroad requests”). It is immaterial that SourceAmerica has provided the written discovery to the Court for its perusal. Id. (“[t]he Court will not review each of plaintiff’s discovery

<sup>1</sup> Those document requests seek: documents relating to U.S. government audits of TTCC (RFP No. 28), all documents relating to U.S. government investigations into TTCC (RFP No. 29), all communications between TTCC and any other person regarding any investigation of SourceAmerica (RFP No. 35), all documents given by TTCC to any person regarding any investigation of SourceAmerica (RFP No. 38); certain TTCC financial records including check registers, “production records,” assignment records, balance sheets, income statements, statements of operations, statements of shareholders’ equity, and statements of cash flow, for the past five years (RFP Nos. 124-128, 130-32); documents relating to any loans made by Lopez or TTCC to Bona Fide (RFP No. 137); and TTCC’s corporate books and records, including documents showing property transfers, use of Bona Fide’s monies by TTCC, TTCC’s ownership structure, TTCC’s board minutes and by-laws, TTCC’s board of directors, TTCC’s profits and losses, and TTCC’s employees (RFP 139-46, 147-148).

1 requests and each of defendants' responses thereto in order to determine whether any  
2 of the defendants' responses are somehow deficient.”).

3       This does not end the inquiry. Under the 2015 amendments to Rule 26, “a party  
4 seeking discovery of relevant, non-privileged information must show, before anything  
5 else, that the discovery sought is proportional to the needs of the case.” Gilead Scis.,  
6 Inc. v. Merck & Co, No. 5:13-cv-04057-BLF, 2016 U.S. Dist. LEXIS 5616, at \*4  
7 (N.D. Cal. Jan. 13, 2016). SourceAmerica fails to make a “specific showing” on Rule  
8 26(b)(1) proportionality, which is sufficient ground to deny the motion as to the TTCC  
9 related discovery. Kaseberg v. Conaco, No. 15-cv-01637-JLS (DHB), 2016 U.S. Dist.  
10 LEXIS 97581, at \*28-29 (S.D. Cal. July 26, 2016).

11       Lopez's status as the CEO of TTCC does not make discovery of TTCC's  
12 documents proportional. Eclipse Grp., 2017 U.S. Dist. LEXIS 77574, at \*14. Even  
13 though it is effectively seeking nonparty TTCC's corporate records and financial  
14 documents from Lopez, SourceAmerica failed to acknowledge, much less address,  
15 TTCC's privacy and confidentiality interests and compliance burdens. Absent such  
16 information, the Court cannot balance the competing interests and find that discovery  
17 related to nonparty TTCC is proportional to the needs of the case. Marsh v.  
18 Bloomberg Inc., No. 16-cv-02647-MEJ, 2017 U.S. Dist. LEXIS 77648, at \*3, 5 (N.D.  
19 Cal. May 22, 2017).

20       Assuming it finds the proportionality factors satisfied (they are not), the Court  
21 should order Lopez to produce only documents responsive to RFP Nos. 129, 137, and  
22 147, limited to those documents substantiating the identified matter in Bona Fide's  
23 responses to the Ft. Hood, Texas and Shaw Air Force Base solicitations.

24 ///

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28 ///

1 **B. Category Two. SourceAmerica's Requests For Pre-Settlement Documents**  
2 **And Information Are Not Relevant Or Likely To Lead To Admissible**  
3 **Evidence.**

4 SourceAmerica contends that RFP Nos. 69-70, 81-85, 87-88, and 91 (Set One)  
5 and Interrogatory 22 (Set One) seek matter relevant to its Unfair Competition Law  
6 ("UCL"), Cal. Bus. & Prof. Code §17200, claim.<sup>2</sup> (Dkt. 419-1, at 7:18-24).

7 Specifically, RFP Nos. 69 and 81-85 and Interrogatory 22 seek documents and  
8 information concerning personal loans made by Lopez to a GSA officer. RFP Nos. 70  
9 and 87-88 seek communications between Lopez and Bona Fide and the Hon. Lloyd D.  
10 George, U.S. District Judge for the District of Nevada, on Program Opportunities.

11 These discovery requests seek irrelevant documents and information in that they  
12 concern events prior to the July 27, 2012 Settlement Agreement (Schouten Decl. ¶ 3,  
13 Ex. B). SourceAmerica admits that Lopez made the loans at issue in RFP Nos. 69 and  
14 81-85 and Interrogatory 22 in 2004 and 2006 (Dkt. 308 ¶ 20). The communications in  
15 RFP Nos. 70 and 87-88 occurred in 2009 (Dkt. 308 ¶ 23), and no other such  
16 communications have occurred since (Lopez Decl. ¶ 3).

17 The Settlement Agreement is governed by Virginia law (Schouten Decl. ¶ 3, Ex.  
18 B, § 5.6), which provides that "[a] general release not only settles enumerated  
19 specific differences, but claims of every kind of character, known or unknown."  
20 Crosswhite v. Mid-Mountain Foods, 13 Va. Cir. 8, 9 (Cir. Ct. 1987). "The scope of a  
21 release agreement, like the terms of any contract, is generally governed by the  
22 expressed intention of the parties." Richfood, Inc. v. Jennings, 255 Va. 588, 591  
23 (1998). "Where parties contract lawfully and their contract is free from ambiguity or  
24 doubt, the agreement between them furnishes the law which governs them." Id.

25 Section 3.3 of the Settlement Agreement provides:

26 In consideration hereof, [SourceAmerica and persons acting on its behalf]  
27 hereby release and forever discharge Bona Fide and [its] agents,

28 <sup>2</sup> SourceAmerica argues that RFP Nos. 124-28 "will show the CEO of Bona Fide  
engaged in a pattern of potentially unlawful acts beginning as early as 2004 and  
continuing through the end of 2013." (Dkt. 419-1, at 8:20-22). This appears to be a  
typographical error, as RFP Nos. 124-28 seek TTCC's financial documents.

1 employees . . . from and against all actions, causes of action, claims, suits,  
2 debts, damages, judgments, liabilities, and demands whatsoever, whether  
3 matured or unmatured, whether at law or in equity, . . . and whether now  
known or unknown, liquidated or unliquidated, that [SourceAmerica] now  
has or may have had, or thereafter claim to have against Bona Fide . . . as  
of the date a [SourceAmerica] representative signs this Agreement.

4 (Schouten Decl. ¶ 12, Ex. B, at § 3.3).

5 Additionally, Section 4.6 of the Settlement Agreement provides:

6 The Parties intend that the execution and performance of this Agreement  
7 shall, as provided above, be effective as a full and final settlement of, and  
8 as a bar to, the claims released herein. The Parties hereto covenant and  
9 agree that if they hereafter discover facts different from or in addition to  
10 the facts that they now know or believe to be true with respect to the  
11 subject matter of this Agreement, it is nevertheless their intent hereby to  
settle and release fully and finally the claims released herein. In  
furtherance of such intention, the release herein shall be and will remain  
in effect as a release notwithstanding the discovery of any such different  
or additional facts.

12 (Id. at § 4.6). SourceAmerica further agreed to waive the protection of any laws that  
13 “provide that a general release does not extend to rights or claims that a party does not  
14 know or expect to exist in its favor at the time of executing the release. . . .” (Id. at §  
15 4.7). It executed the Settlement Agreement on July 27, 2012 (id. at p. 9).

16 Given the plain, unambiguous language of sections 3.3, 4.6 and 4.7,  
17 SourceAmerica may not assert against Bona Fide and Lopez any claims that it may  
18 have had on or before July 27, 2012, regardless of whether the claim had accrued or  
19 was known to SourceAmerica at that time and any subsequent discovery into those  
20 claims. Noell Crane Sys. GmbH v. Noell Crane & Serv., 677 F.Supp.2d 852, 870  
21 (E.D. Va. 2009) (“any and all claims . . . whether known or unknown, matured or  
22 unmatured . . . resulting from any conduct, action . . . related to any matter . . .  
23 whatsoever from the beginning of time up through and including March 28, 2006,”  
24 validly released “all claims that were legally accrued or unaccrued on March 28, 2006,  
25 if they result from any conduct or action prior to March 28, 2006.”); Richfood, 255 Va.  
26 at 590 (“any and all claims . . . whether known or unknown, based upon, arising out of  
27 or connected with anything whatsoever done, omitted or suffered to be done”  
28 unambiguously released all liability for conduct as of settlement agreement’s date).

1 Accordingly, any conduct by Bona Fide and Lopez predating July 27, 2012 is  
2 irrelevant and not likely to lead to the discovery of admissible evidence. Dart Indus.,  
3 649 F.2d at 648-49 (district court properly quashed subpoena; parties' settlement  
4 agreement had effect of releasing any right to engage in discovery into settled claims).

5 Nor is the discovery proportional, as SourceAmerica's only purpose alleging  
6 pre-settlement conduct in its Amended Counterclaims is to sling mud at Bona Fide and  
7 Lopez. On May 27, 2014, SourceAmerica moved to dismiss Bona Fide's breach of  
8 contract claim in part arguing that the Settlement Agreement released any liability for  
9 conduct that occurred prior to July 27, 2012 (Dkt. 66-1, 18:19-23). After Bona Fide  
10 and Lopez moved to dismiss these allegations, SourceAmerica made the following  
11 concession:

12 [T]he factual allegations pertaining to SourceAmerica's UCL  
13 counterclaim that predate the Settlement Agreement are included for  
14 demonstrative purposes . . . and SourceAmerica is not directly seeking  
damages for the alleged pre-settlement conduct.

15 (Dkt. 316, 21:2-6).

16 SourceAmerica's requests for discovery on matters pre-dating a release and for  
17 "demonstrative purposes" is the type of "unnecessary or wasteful discovery" that the  
18 Rule 26(b)(1) proportionality factors are intended to eliminate. Roberts v. Clark Cnty.  
19 Sch. Dist., 312 F.R.D. 594, 603 (D. Nev. 2016).

20 **C. Category Three. SourceAmerica's Requests For "All Communications"**  
21 **And "All ESI" Are Not Proportional, Oppressive, And Unduly**  
**Burdensome.**

22 SourceAmerica contends that documents responsive to RFP Nos. 3 and 61-62  
23 are "presumptively relevant" and "critical to assess Bona Fide's breach of contract  
24 claim against SourceAmerica." (Dkt. 419-1, at 9:2-10).

25 Here, SourceAmerica asks for:

- 26 • "All of [Lopez's] COMMUNICATIONS with SOURCEAMERICA" without  
27 any limitations (RFP No. 3);

28 ///

- 1 • “All ESI RELATED TO BONA FIDE’s participation in the AbilityOne
- 2 program on or after January 1, 2012” (RFP No. 61); and
- 3 • “All ESI RELATED TO BONA FIDE’s COMMUNICATIONS with
- 4 SOURCEAMERICA on or after January 1, 2012” (RFP No. 62).

5 Lopez objected to RFP Nos. 3 and 61-62 as oppressive and burdensome.

6 According to SourceAmerica, Lopez’s objections lack merit because the “only

7 justification . . . is that the requests seek a large volume of documents.” It reasons that

8 since “the majority of responsive documents to the requests would be stored as ESI,”

9 Lopez “has made no showing that producing at least the ESI . . . would cause any

10 undue burden” or that the requests are oppressive (Dkt. 419-1, at 9:11-27).

11 However, Lopez’s explanation for his objections to these requests is that “full

12 compliance with this request would entail review and production of tens of thousands

13 of documents wholly unrelated to any issue in the case.” (Dkt. 419-5, at 47:4-6, 62:17-

14 19, 63:4-6).

15 As to RFP No. 3, Bona Fide has been participating in the AbilityOne Program

16 since 2004 (Dkt. 128 ¶ 84). As such, Lopez’s responsive communications with

17 SourceAmerica span 13 years and necessarily concern day-to-day management issues

18 concerning AbilityOne Program contracts and opportunities that are not at issue in this

19 lawsuit (Lopez Decl. ¶ 4). As to RFP Nos. 61-62, Bona Fide has performed on 5

20 AbilityOne Program contracts since January 1, 2012, none of which are at issue in this

21 lawsuit. Servicing those contracts requires communications with numerous nonparties

22 on day-to-day matters including employee issues, logistics, supplies, and scheduling.

23 ESI and communications responsive to RFP Nos. 61-62 therefore include every aspect

24 of Bona Fide’s business activities, including those related and unrelated to the parties’

25 claims and defenses (Lopez Decl. ¶ 5).

26 Lopez asked that SourceAmerica narrow those RFPs “to documents relevant to

27 the parties’ claims or defenses and/or likely to lead to the discovery of admissible

28 evidence.” (Dkt. 419-5, at 46:22-47:8, 62:11-63:8). SourceAmerica, refused (see Dkt.

1 419-8, at p. 5, 9). Furthermore, Bona Fide and Lopez produced documents and  
2 communications relating to the Program Opportunities that form the basis of Bona  
3 Fide's breach of contract action in response to other SourceAmerica document requests  
4 (Schouten Decl. ¶ 5).

5 Because they call for review and production of thousands of facially irrelevant  
6 documents, RFP Nos. 3 and 61-62 are not proportional to the needs of the case and are  
7 facially oppressive and unduly burdensome. Perez v. United States, No. 13cv1417-  
8 WQH-BGS, 2016 U.S. Dist. LEXIS 21937, at \*21-22 (S.D. Cal. Feb. 23, 2016)  
9 (document requests that were not limited to issues in the case were not proportional,  
10 unduly burdensome, and oppressive); FlowRider Surf, Ltd. v. Pac. Surf Designs, Inc.,  
11 No. 15cv1879-BEN (BLM), 2016 U.S. Dist. LEXIS 153560, at \*29 (S.D. Cal. Nov. 3,  
12 2016) (request for "all documents relating to Flow Services" was overbroad and not  
13 proportional); Kornhauser v. United States, No. 14-cv-05610-HSG (SK), 2016 U.S.  
14 Dist. LEXIS 2485, at \*6 (N.D. Cal. Jan. 8, 2016) (request for "all IRS files relating to"  
15 plaintiff was overbroad and sought irrelevant information). United States EEOC v.  
16 Sensient Dehydrated Flavors Co., No. 1:15-cv-01431-DAD-BAM, 2016 U.S. Dist.  
17 LEXIS 109479, at \*13-14 (E.D. Cal. Aug. 17, 2016) (requests seeking all former  
18 employee files were overbroad and not proportional in disability discrimination case).

19 **D. Category Four. Bona Fide And Lopez Produced All Documents Related To**  
20 **Denise Ransom, None Of Which Were Responsive To RFP No. 91.**

21 Finally, RFP No. 91 requests "All DOCUMENTS RELATING TO the  
22 testimony of Denise Ransom REGARDING the Lloyd George and Alan Bible Federal  
23 Building opportunity." On May 5, 2017 and on May 24, 2017 Bona Fide produced all  
24 documents and communications related to Denise Ransom. None of those documents  
25 and communications were responsive to RFP No. 91 (Schouten Decl. ¶ 6). Lopez will  
26 provide SourceAmerica with a supplemental response to RFP No. 91 stating that no  
27 responsive documents exist, if necessary.

28 ///

1 **E. The Court Should Sanction SourceAmerica For Bringing A Frivolous**  
2 **Motion.**

3 If a motion to compel discovery is denied, the Court “must, after giving an  
4 opportunity to be heard, require the movant, the attorney filing the motion, or both to  
5 pay the party . . . who opposed the motion its reasonable expenses incurred in opposing  
6 the motion, including attorney’s fees,” unless the motion was substantially justified or  
7 other circumstances mitigate against awarding expenses. Fed. R. Civ. P. 37(a)(5)(B);  
8 Eclipse Grp., LLP v. Target Corp., No. 15cv1411-JLS (BLM), 2017 U.S. Dist. LEXIS  
9 73741, at \*13-14 (S.D. Cal. May 12, 2017) (“[t]he party that loses the motion to  
10 compel bears the affirmative burden of demonstrating that its position was  
11 substantially justified”).

12 The present motion is a waste of judicial resources and a violation of  
13 SourceAmerica’s obligations under Rules 1 and 26(b)(1). SourceAmerica moved the  
14 Court to compel Lopez to produce irrelevant and not proportional discovery including  
15 nonparty TTCC’s financial documents, documents and information relating to released  
16 claims, and facially overbroad ESI, as well as documents that Lopez already produced.  
17 Its requests are duplicative of separate requests served on Bona Fide and a subpoena  
18 served on TTCC. Indeed, even the present motion is duplicative of another motion to  
19 compel served on Bona Fide.

20 Furthermore, SourceAmerica failed to analyze the Rule 26(b)(1) proportionality  
21 factors with regard to any of its discovery requests, much less offer any argument  
22 whatsoever in support of RFP Nos. 28-29, 35, 38, 124-28, 130-32, 139-46, and 148  
23 (Set One).

24 Because SourceAmerica lacks substantial justification for bringing this motion,  
25 the Court must award Lopez his reasonable expenses, including attorney’s fees. Fed.  
26 R. Civ. P. 37(a)(5)(B); see, e.g., Brandon v. D.R. Horton, Inc., No. 07cv1256 J (POR),  
27 2008 U.S. Dist. LEXIS 40000 at \* 6 (S.D. Cal. May 16, 2008) (adopting magistrate  
28 judge’s award of attorney’s fees following successful opposition of a motion to



1 compel); FlowRider Surf, Ltd. v. Pac. Surf Designs, Inc., No. 15cv1879-BEN (BLM),  
2 2017 U.S. Dist. LEXIS 34855, at \*22 (S.D. Cal. Mar. 9, 2017) (ordering fee sanctions  
3 against defendant for filing “motion to compel irrelevant, duplicative, and confidential  
4 documents, which are not proportional to the needs of this case.”).

5 Lopez incurred reasonable attorney’s fees of \$3,975 in opposing this motion  
6 (Schouten Decl. ¶ 7).

#### 7 **IV. CONCLUSION**

8 Based on the foregoing, Lopez respectfully asks the Court to deny  
9 SourceAmerica’s motion to compel further responses to RFP Nos. 3, 28-29, 35, 38, 61-  
10 62, 69-70, 81-85, 87-88, 91, 124-32, 137, and 139-148 (Set One) and Interrogatory 22  
11 (Set One) and award Lopez his reasonable attorney’s fees of \$3,975 incurred in  
12 opposing this motion.

13  
14 WRIGHT, L’ESTRANGE & ERGASTOLO

15 Attorneys for Plaintiff and Counterdefendant  
16 Bona Fide Conglomerate, Inc. and  
Counterdefendant Ruben Lopez

17 Dated: June 2, 2017

18 By: /s/ Andrew E. Schouten  
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